

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

REBECCA COUSINEAU, individually on her
own behalf and on behalf of all others similarly
situated,

Plaintiff,

v.

MICROSOFT CORPORATION, a Delaware
corporation,

Defendant.

Case No. 2:11-cv-01438-JCC

**PLAINTIFF'S MOTION TO SEAL
PURSUANT TO LOCAL CIVIL RULE
5(g)**

NOTE ON MOTION CALENDAR:
August 9, 2013

Pursuant to Local Civil Rule 5(g) Plaintiff Rebecca Cousineau ("Plaintiff") submits this Motion to Seal certain documents in connection with her concurrently filed Motion for Class Certification. Plaintiff will file under seal copies of materials designated as "Confidential" or "Attorneys' Eyes Only" by Defendant Microsoft and copies of materials that reference or otherwise discuss such material. Microsoft designated the above-mentioned information "Confidential" or "Attorneys' Eyes Only" under the November 13, 2012 Stipulated Protective Order entered by this Court ("Protective Order") (Dkt. 53) and the February 1, 2013 Source Code Supplement. (Dkt. 57.) Plaintiff will additionally file with the Court under seal an unredacted version of her Motion for Class Certification, in addition to a redacted Motion for Class Certification.

Plaintiff will file the following documents under seal pursuant to Local Civil Rule 5(g):

- Exhibits A, B, C, D, E, F, G, H, I, J, N, and O to the Declaration of Rafey S. Balabanian in Support of Plaintiff's Motion for Class Certification. These documents will be described in the Declaration of Benjamin S. Thomassen in Support of Plaintiff's Motion to Seal, filed contemporaneously herewith. The documents were designated "Confidential" or "Attorneys' Eyes Only" by Defendant Microsoft, or reference or otherwise discuss documents that were so designated by Defendant Microsoft.
- Plaintiff's unredacted Motion for Class Certification. This document will be described in the Declaration of Benjamin S. Thomassen in Support of Plaintiff's Motion to Seal filed contemporaneously herewith. Plaintiff's unredacted Motion for Class Certification will reference and discuss the contents of documents designated "Confidential" or Attorneys' Eyes Only by Defendant Microsoft.

In accordance with Local Civil Rule 5(g)(3)(A), Plaintiff certifies that she met and conferred with Defendant Microsoft via telephone conference on July 25, 2013 to discuss whether the above-mentioned documents should be filed under seal. (*See* Declaration of Benjamin S. Thomassen in Support of Plaintiff's Motion to Seal, submitted concurrently

herewith, at ¶ 17.) Benjamin S. Thomassen of Edelson LLC for Plaintiff and the putative Class and Steve Rummage of Davis Wright Tremaine LLP for Defendant participated in the teleconference. (*Id.*) During the teleconference, both Parties noted that the Protective Order entered by the Court in this case provides for specific instructions where a party wishes to use documents marked “Confidential” or “Attorneys’ Eyes Only” to support a motion (such as the Exhibits detailed herein) and, pursuant to that instruction, agreed that filing the above-referenced documents under seal was appropriate at this time, with Defendant to file a responsive brief that provides the requisite showing required by Local Civil Rule 5(g)(3). (*Id.* (citing Dkt. 53).)

Good cause exists for allowing Plaintiff to file the above-referenced documents under seal. As set forth in the Declaration of Benjamin S. Thomassen in Support of Plaintiff’s Motion to Seal, they will all contain information that has been designated “Confidential” or “Attorneys’ Eyes Only” by Defendant. These documents were produced or generated during discovery subject to the Protective Order, or otherwise reference information designated by Microsoft as “Confidential” or “Attorney’s Eyes Only” pursuant to the Protective Order.

The Protective Order acknowledges that certain confidential, proprietary, or private information may be disclosed during the course of discovery, and that the Parties shall follow the procedures set forth in Local Civil Rule 5(g) for filing documents under seal. Together, Local Civil Rule 5(g) and the Protective Order require (1) that Plaintiff file material designated or referencing “Confidential” or “Attorney’s Eyes Only” information under seal, (2) that Plaintiff move to seal the material, and (3) that Defendant make the showing required under 5(g)(3) to keep the information under seal.

Concurrent with this Motion, Plaintiff will file under seal the above-mentioned exhibits and an unredacted version of her Motion for Class Certification. Pursuant to Local Civil Rule 5(g)(3), Defendant must respond to this Motion with “a specific statement of the applicable legal standard for keeping [the] document[s] under seal.”

1 **WHEREFORE**, Plaintiff respectfully requests that this Court enter an Order granting
2 Plaintiff's Motion to Seal.

3
4 Dated: July 29, 2013

Respectfully Submitted,

5 REBECCA COUSINEAU, individually and on
6 behalf of a class of similarly situated individuals

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*Counsel for Plaintiff Rebecca Cousineau and the
Putative Class*

CERTIFICATE OF SERVICE

I, J. Dominick Larry, an attorney, hereby certify that on July 29, 2013, I served the above and foregoing by causing true and accurate copies of such paper to be filed and transmitted to all counsel of record via the Court's CM/ECF electronic filing system.

Dated: July 29, 2013

/s/ J. Dominick Larry